



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

cn

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,354	12/22/2000	Hans Sachse		8217

26474 7590 04/22/2003

KEIL & WEINKAUF  
1350 CONNECTICUT AVENUE, N.W.  
WASHINGTON, DC 20036

EXAMINER

GHAFOORIAN, ROZ

ART UNIT	PAPER NUMBER
----------	--------------

3763

DATE MAILED: 04/22/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/742,354

**Applicant(s)**

SACHSE, HANS

**Examiner**

Roz Ghafoorian

**Art Unit**

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 11-13 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-17 is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 3763

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Species A in Paper No. 4 is acknowledged. The traversal is on the ground(s) that the examiner has not provided reasons for the election. This is not found persuasive because the applicant himself has referred to the three drawings as three different embodiments. Figure one fails to contains the stiffing member or the spray connector attached to the stiffing member and in both figures 2 and 3 the stylet is lacking the spherical tip. Therefore the figures are patentably distinct form each other as the applicant himself has recognize by referring to them as "different embodiments".

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

Art Unit: 3763

directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 1, 2, 5-7, 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5256146 to Ensminger et al.

Ensminger teaches a probe tube, with a tip area, a tip, having an outlet opening, a guide stylet with a curve tip is. The probe is more flexible in the tip are, as well as multiple outlet openings in the tip are. The tube is made form plastic material, and has a termination for connecting the stylet to the tube.

2. Claims 1, 3, 8, 9, 10 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S Patent Pub No.2001/0039413 to Bowe.

Bowe teaches a probe tube with tip are, having an outlet opening, a guide stylet 118 with a curve tip are. The probe is inserted in to the patient, inserting the stylet in to the probe, terminations 136, and a spray connector 132.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent Pub No.2001/0039413 to Bowe or US Patent No. 5256146 to Ensminger et al.

Art Unit: 3763

Both Bowe and Ensminger teach the invention except for the thinner tip area of the probe tube.

At the time the invention was made it would have been an obvious matter of design choice to a person of ordinary skill in the art to have thinner tip area of the probe tube because the applicant has not disclosed that having a thinner tip area of the probe tube provides an advantage, is used for a particular purpose, or solves a stated problem. one of ordinary skill in the art, furthermore would have expected the applicants invention to have performed equally well with a non-thinner tip area of the probe tube.

Therefore, it would have been an obvious matter of design choice to modify Bowe or Ensminger to obtain the invention as specified in claim 4.

#### ***Allowable Subject Matter***

4. Claims 14-17 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the process of delivery the probe and stylet to the small intestine is unique, there are many probe and stylet as the applicant has describe them however none of them are used for the intestine. .

#### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 3763

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Ghafoorian whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

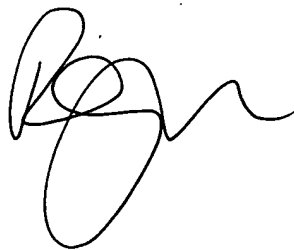
RG  
April 11, 2003



**MICHAEL J. HAYES**  
**PRIMARY EXAMINER**

Application/Control Number: 09/742,354  
Art Unit: 3763

Page 6

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line and a small flourish.